

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT WINCHESTER

KENNETH J. EVANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos. 4:03-cv-47 / 4:01-cr-38
	)	<i>Edgar / Carter</i>
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

Petitioner Kenneth J. Evans, a federal prisoner, filed a *pro se* motion for post-conviction relief under 28 U.S.C. § 2255. The United States of America opposes the motion. The Court referred the case to Magistrate Judge William B. Mitchell Carter for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

On January 12, 2007, Magistrate Judge Carter submitted a report and recommendation. [Doc. No. 8]. The parties have not timely filed any objections. A copy of the report and recommendation was mailed to petitioner Evans at his last known mailing address but the envelope has been returned by the United States Postal Service marked “Refused.”

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the motion for post-conviction relief brought under 28 U.S.C. § 2255 shall be **DENIED and DISMISSED WITH PREJUDICE**.

Any appeal from this decision by petitioner Evans would be frivolous and not taken in good

faith. Any application by petitioner Evans for leave to proceed on appeal *in forma pauperis* shall be denied pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a).

If petitioner Evans files a notice of appeal, it shall be treated as an application for a certificate of appealability which will be denied pursuant to 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b)(1) because he has not made a substantial showing of the denial of a constitutional right.

A separate judgment will be entered.

SO ORDERED.

ENTER this the 12<sup>th</sup> day February, 2007.

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE